

EMMA LAW, P.C.
LEONARD EMMA, SBN 224483
lemma@employment-lawyers.com
STEPHEN NOEL ILG, SBN 275599
silg@employment-lawyers.com
1999 Harrison Street, 18th Floor
Oakland, CA 94612
Tel: 415-362-1111
Fax: 415-362-1112

Attorneys for Plaintiff and the Class

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHRISTOPHER SAMPINO, on behalf of himself, all others similarly situated, and the general public,

Plaintiff,
vs.

VERSACE USA, INC., a New York corporation, and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 4:16-CV-07198-JSW

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS SETTLEMENT**

Date: August 16, 2019
Time: 9:00 a.m.
Judge: Hon. Jeffrey S. White
Court: Ctrm. 5, 2nd Floor

TO THE COURT, ALL INTERESTED PARTIES, AND THEIR ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT on August 16, 2019 at 9:00 a.m., in Courtroom 5 on the 2nd floor of this Court, located at 1301 Clay Street, Oakland, CA 94612, Plaintiffs Christopher Sampino, Joshua Gallegos, and Michael Gonzalez, individually, and on behalf of all others similarly situated, will and hereby do move for an order granting final approval to the settlement of claims as set forth in the Class Settlement Agreement and Addendum to Class Settlement Agreement (“Agreement” or “Settlement”) in the above-captioned matter.

This motion is made on the grounds that the Settlement is fair, adequate, and reasonable given the relative strengths and weaknesses of the claims and defenses; the amount offered in the Settlement; the risks of further litigation; the experience and views of counsel; the lack of objections to the Settlement; and the public policy in favor of quieting litigation. This motion is based upon the Notice, the accompanying Memorandum of Points and Authorities, the concurrently filed Declaration of Leonard Emma and exhibits thereto, the anticipated Declaration of the Settlement Administrator, the complete files and records of this action, and any further briefing, documentary evidence, and arguments of counsel as may be presented to the Court at the hearing of this motion.

Respectfully Submitted,

Dated: April 8, 2019

EMMA LAW, P.C.

/s/ Leonard Emma

Leonard Emma, Esq.
Attorneys for Plaintiffs and the Class

EMMA LAW, P.C.
 1999 Harrison Street, 18th Floor
 Oakland, CA 94612
 (415) 362-1111

TABLE OF CONTENTS

| | | |
|------|---|----|
| I. | INTRODUCTION..... | 1 |
| II. | CASE BACKGROUND..... | 2 |
| A. | The Parties | 2 |
| B. | The Pleadings | 2 |
| C. | Investigation and Discovery | 3 |
| D. | Settlement Negotiations | 3 |
| III. | DESCRIPTION OF THE SETTLEMENT | 4 |
| A. | The Class..... | 4 |
| B. | Consideration | 4 |
| C. | Mechanics of Settlement..... | 4 |
| D. | PAGA Allocation..... | 5 |
| E. | Class Representative Enhancement Payments..... | 5 |
| F. | Attorneys' Fees and Litigation Costs | 6 |
| G. | Release of Claims | 6 |
| H. | The Court-Approved Notice Program..... | 6 |
| I. | Class Members' Response to the Settlement | 7 |
| IV. | LEGAL ARGUMENT..... | 8 |
| A. | Standard of Review..... | 8 |
| B. | All Relevant Factors Weigh in Favor of Final Approval | 9 |
| 1. | The Strength of the Case | 9 |
| 2. | The Size of the Claims and Amount Offered to Settle Them..... | 11 |
| 3. | The Risk, Expense, Complexity, and Likely Duration of Litigation | 12 |
| 4. | The Stage of the Proceedings | 13 |
| 5. | Experienced Counsel Adequately Represented the Class | 14 |

| | | |
|----|--|-----------|
| 1 | 6. The Response of the Class to the Proposed Settlement | 15 |
| 2 | V. THE PARTIES HAVE IMPLEMENTED THE COURT-APPROVED NOTICE | |
| 3 | PROGRAM AND THE SETTLEMENT ADMINISTRATOR'S FEES MAY BE | |
| 4 | AWARDED | 16 |
| 5 | VI. CONCLUSION | 16 |
| 6 | | |
| 7 | | |
| 8 | | |
| 9 | | |
| 10 | | |
| 11 | | |
| 12 | | |
| 13 | | |
| 14 | | |
| 15 | | |
| 16 | | |
| 17 | | |
| 18 | | |
| 19 | | |
| 20 | | |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |
| 26 | | |
| 27 | | |

EMMA LAW, P.C.
1999 Harrison Street, 18th Floor
Oakland, CA 94612
(415) 362-1111

EMMA LAW, P.C.
 1999 Harrison Street, 18th Floor
 Oakland, CA 94612
 (415) 362-1111

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

CASES

| | |
|--|-------|
| <i>Bellows v. NCO Fin. Sys.</i> , 2008 U.S. Dist. LEXIS 103525 (S.D. Cal. Dec. 2, 2008) | 8 |
| <i>Boyd v. Bechtel Corp.</i> , 485 F. Supp. 610 (N.D. Cal. 1979)..... | 15 |
| <i>Chun-Hoon v. McKee Foods Corp.</i> , 716 F. Supp. 2d 848 (N.D. Cal. 2010)..... | 15 |
| <i>Churchill Village, L.L.C. v. General Electric</i> , 361 F.3d 566 (9th Cir. 2004)..... | 16 |
| <i>City of Detroit v. Grinnell Corp.</i> , 495 F.2d 448 (2d Cir. 1974)..... | 12 |
| <i>Franklin v. Kaypro Corp.</i> , 884 F.2d 1222 (9th Cir. 1989) | 8 |
| <i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998) | 8, 9 |
| <i>Hicks v. Toys 'R'Us–Delaware, Inc.</i> , 2014 WL 4703915, at *1 (C.D. Cal. Sept. 2, 2014)..... | 12 |
| <i>In re Am. Bank Note Holographics, Inc.</i> , 127 F. Supp. 2d 418 (S.D.N.Y. 2001)..... | 15 |
| <i>In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.</i> , 55 F.3d 768 (3d Cir. 1995)..... | 13 |
| <i>In re Wash. Public Power Supply System Sec. Litig.</i> , 720 F. Supp. 1379 (D. Ariz. 1989)..... | 15 |
| <i>Linney v. Cellular Alaska P'ship</i> , 151 F.3d 1234 (9th Cir. 1998) | 12 |
| <i>Mandujano v. Basic Vegetable Prods., Inc.</i> , 541 F.2d 832 (9th Cir. 1976)..... | 15 |
| <i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306 (1950) | 16 |
| <i>Nat'l Rural Telcomms Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004) | 15 |
| <i>Nordstrom Com'n Cases</i> , 186 Cal.App.4th 576, 589 (2010) | 12 |
| <i>Officers for Justice v. Civil Service Comm'n</i> , 688 F.2d 615 (9th Cir. 1982)..... | 8, 12 |
| <i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2009) | 15 |
| <i>Staton v. Boeing Co.</i> , 327 F.3d 938 (9th Cir. 2003) | 8 |
| <i>Williams v. Brinderson Constructors</i> , 2017 WL 490901, at *5 (C.D. Cal. Feb. 6, 2017)..... | 12 |

-v-

EMMA LAW, P.C.
1999 Harrison Street, 18th Floor
Oakland, CA 94612
(415) 362-1111

1 **STATUTES**

| | |
|--|-------|
| 2 Cal. Bus. & Prof. Code § 17200 | 2 |
| 3 Cal. Lab. Code § 201 | 2, 3 |
| 4 Cal. Lab. Code § 226 | 2 |
| 5 Cal. Lab. Code § 226.3 | 2 |
| 6 Cal. Lab. Code § 226.7 | 2 |
| 7 Cal. Lab. Code § 406 | 3 |
| 8 Cal. Lab. Code § 512 | 2 |
| 9 Cal. Lab. Code § 1174 | 2 |
| 10 Cal. Lab. Code § 1174.5 | 2 |
| 11 Cal. Lab. Code § 2802 | 3 |
| 12 Fed. R. Civ. P. 23 | 8, 16 |

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Christopher Sampino, Joshua Gallegos, and Michael Gonzalez, individually, and on behalf
 4 of all others similarly situated, (“Plaintiffs” or “Class Representatives”) and Defendant Versace
 5 USA, Inc. (“Defendant” and/or “Versace”) (collectively, the “Parties”) moved this Court for
 6 preliminary approval of a proposed class settlement of this matter on October 5, 2018 (Dkt. No.
 7 54.) (“Motion for Preliminary Approval”). On December 17, 2018, the Court issued an order
 8 directing the parties to submit supplemental briefing and submissions. (Dkt. No. 59.) On January
 9 17, 2019, the Parties submitted supplemental briefing and submissions. (Dkt. No. 60.) On
 10 January 23, 2019, the Court entered an order granting preliminary approval to the Settlement¹ and
 11 certified the following Class:

12 All individuals who Versace employed in the State of California in a retail salesperson
 13 position from November 16, 2012 to September 21, 2018.

14 (Dkt. 61 (“Order Granting Preliminary Approval”).)

15 In accordance with the terms of the Settlement and the Court’s Order Granting Preliminary
 16 Approval, Analytics Consulting, LLC (the “Settlement Administrator”), mailed the Court-
 17 approved Notice of Class Action Settlement and Release of Claims (the “Notice”) to 96 Class
 18 Members on February 21, 2019. The Notice provides a 60-day period for Class Members to opt-
 19 out or object. Class Members are not required to submit a claim form to participate in the
 20 Settlement. As of April 5, 2019, zero Class Members have opted-out of the Settlement. As of
 21 April 5, 2019, zero Class Members have objected to the Settlement. Of the 96 Notices that were
 22 originally sent out, four were undeliverable. New addresses were found for these four Class
 23 Members and their Notices were remailed to the new addresses.² (Emma Decl. ¶ 2.)

24 ¹ The Class Settlement Agreement and Addendum to Class Settlement Agreement may be found
 25 at Dkt. Nos. 54-2 and 60-1, respectively.

26 ² After the opt-out period expires on April 22, 2019, Plaintiffs will submit a Declaration from the
 27 Settlement Administrator setting forth the details and final results of the Notice procedure.
 28 Plaintiffs may also submit a Supplemental Declaration of Leonard Emma, if appropriate. (Emma
 Decl. ¶ 2.)

EMMA LAW, P.C.
1999 Harrison Street, 18th Floor
Oakland, CA 94612
(415) 362-1111

1 Plaintiffs hereby move the Court for an order granting final approval to the Settlement.
2 This motion is made on the grounds that the Settlement is fair, adequate, and reasonable given
3 the relative strengths and weaknesses of the claims and defenses; the risks, expense, complexity
4 and likely duration of further litigation; the amount offered in settlement; the experience and
5 views of counsel; the lack of opt-outs to the Settlement; the lack of objections to the Settlement;
6 and the public policy in favor of quieting litigation. (Emma Decl. ¶ 3.)

7 **II. CASE BACKGROUND**

8 **A. The Parties**

9 Defendant Versace USA, Inc., is a well-known luxury retailer that operates clothing
10 boutiques worldwide, including at a handful of locations within California. In 2016, Plaintiff
11 Christopher Sampino was employed by Versace as a retail salesperson at its Livermore outlet
12 location. Plaintiff Joshua Gallegos worked at the Livermore outlet location from approximately
13 mid-2016 to mid-2017. Plaintiff Michael Gonzalez worked at Versace's Beverly Center store as
14 a sales associate from approximately October 2016 to April 2017. (Emma Decl. ¶ 4.)

15 **B. The Pleadings**

16 On November 16, 2016, Plaintiff Sampino filed this action against Versace. Sampino
17 asserts various wage and hour claims under California law, including the following: (1) Failure
18 to Compensate for All Hours Worked; (2) Failure to Provide Meal and Rest Periods (Cal. Lab.
19 Code §§ 226.7, 512); (3) Failure to Maintain Accurate Records (Cal. Lab. Code §§ 1174, 1174.5);
20 (4) Failure to Furnish Wage and Hour Statements (Cal. Lab. Code, §§ 226(e), 226.3); (5) Failure
21 to Timely Pay Final Wages (Cal. Lab. Code § 201); and (6) Unfair Competition (Cal. Bus. &
22 Prof. Code § 17200). Sampino also alleges individual claims for Racial Discrimination and
23 Harassment, Failure to Prevent and Investigate Discrimination and Harassment, and Wrongful
24 Termination. On December 13, 2016, Defendant Versace filed its Answer, denying all claims
25 and asserting affirmative defenses. (Emma Decl. ¶ 5.)

26 On April 19, 2017, Plaintiff Sampino filed a First Amended Complaint ("FAC"). The
27 FAC clarified that the claims for Racial Discrimination and Harassment, Failure to Prevent and
28

EMMA LAW, P.C.
 1999 Harrison Street, 18th Floor
 Oakland, CA 94612
 (415) 362-1111

1 Investigate Discrimination and Harassment, and Wrongful Termination were individual claims
 2 asserted on behalf of Plaintiff Sampino only. (Emma Decl. ¶ 6.)

3 On June 5, 2018, Plaintiff Sampino filed a Motion for Leave to File a Second Amended
 4 Complaint (“SAC”). The proposed SAC added additional class representatives (Plaintiffs Joshua
 5 Gallegos and Michael Gonzalez), a class reimbursement claim (Cal. Lab. Code §§ 406, 2802),
 6 and Plaintiff Gallegos’ individual claims. The proposed SAC also modified the allegations
 7 regarding the exhaustion of administrative remedies under PAGA so that they were made on
 8 behalf of all three Plaintiffs. Plaintiff’s Motion for Leave was fully briefed at the time the Parties
 9 resolved this matter and filed a Joint Notice of Settlement. (Dkt. No. 50.) As part of the
 10 Settlement, the Parties agreed to resolve the claims set forth in the proposed SAC. The SAC was
 11 filed on October 10, 2018. (Dkt. No. 56.) (Emma Decl. ¶ 7.)

12 **C. Investigation and Discovery**

13 Over the course of nearly two years, the Parties conducted extensive written discovery
 14 and exchanged detailed information and data concerning the claims, defenses, and alleged
 15 damages at issue herein. Class Counsel continuously met and conferred with counsel for Versace
 16 to ensure sufficient information had been exchanged to permit evaluation of the claims at issue.
 17 For example, Class Counsel obtained the contact information for putative class members and
 18 then interviewed them. Class Counsel reviewed thousands of pages of documents produced in
 19 response to written discovery requests, including documents pertaining to the policies and
 20 practices complained of herein. Class Counsel engaged an expert statistician to analyze class-
 21 wide time and pay records to ascertain the types and frequency of violations. Class Counsel
 22 conducted several depositions. (Emma Decl. ¶ 8.)

23 **D. Settlement Negotiations**

24 On July 17, 2018, the Parties engaged in a full day of arm’s length negotiations before
 25 Mark Rudy, an experienced and well-respected neutral in wage and hour class action litigation.
 26 At mediation, the Parties agreed upon the key terms of the Settlement. The Parties later negotiated
 27 additional terms and drafted a formal Settlement Agreement, which was presented to this Court for
 28

1 approval. Plaintiffs and Class Counsel believe that the Settlement is fair, reasonable, and
 2 adequate and is in the best interest of Class Members in light of all known facts and
 3 circumstances, including the defenses asserted by Defendant, the risk of delay, and potential
 4 appellate issues. The Parties are represented by competent and experienced wage and hour class
 5 action counsel with whom they consulted prior to settling. (Emma Decl. ¶ 9.)

6 **III. DESCRIPTION OF THE SETTLEMENT**

7 **A. The Class**

8 Plaintiffs bring this action on behalf of all individuals who Versace employed in the State
 9 of California in a retail salesperson position from November 16, 2012 to September 21, 2018.
 10 (Settlement Section I.) Versace has identified 96 Class Members. (Emma Decl. ¶ 10.)

11 **B. Consideration**

12 Versace has agreed to pay Three Hundred Thousand Dollars (\$300,000.00 USD) (the
 13 “Settlement Amount”). Versace is also responsible for paying the employer’s share of all payroll
 14 taxes customarily and ordinarily paid by employers. The payment of these taxes is not included
 15 in the Settlement Amount. (Settlement Section II.)

16 **C. Mechanics of Settlement**

17 The Net Settlement Amount means that portion of the Settlement Amount to be allocated
 18 and made available for payment to Class Members after subtracting: (i) attorneys’ fees, (ii) costs,
 19 (iii) enhancement payments, (iv) settlement administration costs, and (v) the PAGA payment to
 20 the LWDA. (Settlement Section II.)

21 For each Class Member, the Settlement Administrator shall determine the number or
 22 portion of workweeks worked during the Class Period based upon information provided by
 23 Versace. Partial weeks will be rounded up to the nearest full week. The sum of the workweeks
 24 worked by all Class Members shall be the “Total Workweeks.” The pro-rata share of the Net
 25 Settlement Amount to each Class Member will be calculated as follows: (a) The Net Settlement
 26 Amount shall be divided by the number of Total Workweeks; the resulting figure is the
 27 “Workweek Dollar Value.” (b) For each Class Member, the Settlement Administrator shall

EMMA LAW, P.C.
 1999 Harrison Street, 18th Floor
 Oakland, CA 94612
 (415) 362-1111

1 multiply the number of workweeks the Settlement Class Member worked during the Class Period
 2 by the Workweek Dollar Value. The resulting figure shall be the “Gross Allocated Amount” for
 3 each such Class Member. (c) The Gross Allocated Amount was indicated on the Notice sent to
 4 each Class Member. (Settlement Section VII.)

5 Because Class Members’ claims include claims for wages, penalties, and interest, (i) 34%
 6 of the net payment to each Class Member shall be treated as wages, reported on an IRS form W-
 7 2, and (ii) 66% shall be treated as payment for penalties and interest, reported on an IRS Form
 8 1099.³ (Settlement Section II.) Defendant’s share of any payroll taxes owed will be paid
 9 separately by Defendant. (Settlement Section II.) Any checks issued to Class Members shall
 10 remain negotiable for a period of one hundred eighty (180) days from the date of mailing. Any
 11 checks that remain uncashed after one-hundred eighty (180) days will be voided. The funds
 12 associated with any checks which are not timely negotiated will be deposited to the unclaimed
 13 funds division of the State of California. (Settlement Section VII.)

14 **D. PAGA Allocation**

15 The The Settlement allocates Fifteen Thousand Dollars (\$15,000.00) to the settlement of
 16 Plaintiffs’ PAGA claim on behalf of all Class Members. (Settlement Section II.) Pursuant to the
 17 express requirements of Cal. Labor Code § 2699(i), the PAGA Penalty Payment shall be allocated
 18 as follows: Eleven Thousand Two Hundred Fifty Dollars (\$11,250) (75%) to the LWDA for the
 19 enforcement of labor laws and education of employers, and Three Thousand Seven Hundred Fifty
 20 Dollars (\$3,750) (25%) to be included in the distribution to Class Members. (Settlement Section
 21 II.)

22 **E. Class Representative Enhancement Payments**

23 Subject to Court approval, the Settlement provides for Enhancement Payments of Two
 24 Thousand Dollars (\$2,000) each to Class Representatives Sampino, Gallegos, and Gonzalez for

25 ³ The \$3,750.00 allocated as the employees’ share of the PAGA Allocation, discussed below,
 26 shall be deemed penalties and interest or other non-wage recovery and not subject to payroll
 27 taxes.

EMMA LAW, P.C.
 1999 Harrison Street, 18th Floor
 Oakland, CA 94612
 (415) 362-1111

1 their time, risk, and effort as the representatives of the class.⁴ (Settlement Section II.)

2 **F. Attorneys' Fees and Litigation Costs**

3 Class Counsel will seek court approval of, and Versace will not oppose Class Counsel's
 4 request for, Ninety-Nine Thousand, Nine Hundred and Ninety Dollars (\$99,990.00),
 5 approximately thirty-three percent (33%) of the Maximum Gross Settlement Amount, for
 6 reasonable attorneys' fees to compensate and reimburse Class Counsel for the work already
 7 performed by Class Counsel in this case and all of the work remaining to be performed by Class
 8 Counsel in securing Court approval of the Settlement and ensuring that the Settlement is fairly
 9 administered and implemented, among other ongoing duties that may arise. Class Counsel will
 10 also be allowed to apply separately for reimbursement of reasonable litigation costs incurred.
 11 (Settlement Section II).⁵

12 **G. Release of Claims**

13 In exchange for the consideration provided by Defendant, Class Members who do not
 14 timely exclude themselves from the settlement will release all claims that were pled or that could
 15 have been pled based on the factual allegations asserted. (Settlement Section V.) The Class
 16 Representatives stipulate to a broader general release that includes all claims, whether known or
 17 unknown, against Versace. (Settlement Section V.)

18 **H. The Court-Approved Notice Program**

19 Per the Order Granting Preliminary Approval and the terms of the Settlement, the
 20 Settlement Administrator has completed many of its duties. Fees for administration are estimated
 21 to be \$10,000.⁶ (Emma Decl. ¶ 11.)

22 Settlement administration duties included (or will include), *inter alia*, the following:
 23 calculating awards, formatting and mailing the Notice, processing any potential requests for

24 ⁴ Details regarding Plaintiffs' efforts are set forth in the concurrently filed Motion for Attorneys'
 25 Fees, Costs and Class Representative Enhancement Payments.

26 ⁵ Details regarding Class Counsel's request for fees and costs are set forth in the concurrently filed
 27 Motion for Attorneys' Fees, Costs and Class Representative Enhancement Payments.

28 ⁶ As mentioned above, the Settlement Administrator will provide a declaration following the close
 29 of the opt-out period setting forth details regarding the work it has performed.

EMMA LAW, P.C.
1999 Harrison Street, 18th Floor
Oakland, CA 94612
(415) 362-1111

1 exclusion and objections (there are none as of April 5, 2019), performing necessary skip traces
2 on Notices returned as undeliverable mailing Class Member settlement checks, responding to
3 Class Member inquiries as needed, issuing any required tax reporting forms, providing status
4 reports to Counsel for the Parties, hosting a website and phone line for Class Members to obtain
5 more information, and drafting a declaration of compliance with the terms of the Stipulation.
6 (Emma Decl. ¶ 12.)

7 Counsel for Defendant provided the Settlement Administrator with a list containing the
8 Class Member's names, last known addresses, and other employment information required to
9 process the settlement (the "Class List"). The Class List contained data for 96 Class Members.
10 The mailing addresses contained in the Class List were processed and updated utilizing the
11 National Change of Address Database ("NCOA") maintained by the U.S. Postal Service. The
12 NCOA contains requested changes of address filed with the U.S. Postal Service. In the event that
13 any individual had filed a U.S. Postal Service change of address request, the address listed with
14 the NCOA would be utilized in connection with the mailing of the Notice. (Emma Decl. ¶ 13.)

15 The Settlement Administrator then mailed the Court-approved Notice to 96 Class
16 Members on February 21, 2019. The Notice provides a 60-day period for Class Members to opt-
17 out or object. Class Members are not required to submit a claim form to participate in the
18 settlement. (Emma Decl. ¶ 14.)

19 **I. Class Members' Response to the Settlement**

20 As of April 5, 2019, zero Class Members have opted-out of the Settlement. As of April
21 5, 2019, zero Class Members have objected to the Settlement. Of the 96 Notices that were
22 originally sent out, four were undeliverable. New addresses were found for these four Class
23 Members and their Notices were remailed to the new addresses. In addition, Class Counsel has
24 been contacted by several Class Members since the Notices were mailed. Class Counsel is
25 pleased to report that, thus far, Class Members universally support the Settlement.⁷ (Emma Decl.

26 ⁷ After the opt-out period expires on April 22, 2019, Plaintiffs will submit a Declaration from the
27 Settlement Administrator setting forth the details and final results of the Notice procedure.

1 ¶ 15.)

2 **IV. LEGAL ARGUMENT**

3 **A. Standard of Review**

4 Federal law and public policy strongly favor and encourage settlements, especially in class
 5 actions. *See Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989), cert. denied, 498
 6 U.S. 890 (1990) (“it hardly seems necessary to point out that there is an overriding public interest
 7 in settling and quieting litigation. This is particularly true in class action suits”). When reviewing
 8 a motion for approval of a class settlement, the Court should give due regard to “what is otherwise
 9 a private consensual agreement negotiated between the parties,” and must therefore limit the
 10 inquiry “to the extent necessary to reach a reasoned judgment that the agreement is not the product
 11 of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement,
 12 taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice v. Civil*
 13 *Service Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982).

14 To approve a proposed settlement of a class action under Fed. R. Civ. P. 23(e), the Court
 15 must find that the proposed settlement is “fair, adequate and reasonable,” recognizing that “it is
 16 the settlement taken as a whole, rather than the individual component parts, that must be examined
 17 for overall fairness.” *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir. 2003) (quoting *Hanlon v.*
 18 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). Furthermore, analysis of the
 19 appropriateness of approval begins with a presumption of fairness. Where “a proposed class
 20 settlement has been reached after meaningful discovery, after arm’s length negotiation conducted
 21 by capable counsel, it is presumptively fair.” *Bellows v. NCO Fin. Sys.*, 2008 U.S. Dist. LEXIS
 22 103525, *18 (S.D. Cal. Dec. 2, 2008).

23 The presumption of fairness applies here: As discussed above, Plaintiffs obtained
 24 sufficient information permitting them to assess the strengths and value of the case before entering
 25 into settlement negotiations. The Settlement was negotiated by capable counsel, using an
 26 experienced mediator. In light of these facts, the Settlement is presumptively fair, and, as
 27 explained below, all relevant factors support final approval.

EMMA LAW, P.C.
 1999 Harrison Street, 18th Floor
 Oakland, CA 94612
 (415) 362-1111

1 **B. All Relevant Factors Weigh in Favor of Final Approval**

2 Although Rule 23 provides no precise formula for making this determination, the Ninth
 3 Circuit has identified several factors to be considered. These factors include: (1) the strength of
 4 the case; (2) the size of the claims and amount offered to settle them; (3) the risk, expense,
 5 complexity and likely duration of further litigation; (4) the stage of the proceedings, i.e., whether
 6 the plaintiffs and their counsel have conducted sufficient discovery to make an informed decision
 7 on settlement; (5) whether the class has been fairly and adequately represented during settlement
 8 negotiations by experienced counsel; and (6) the reaction of the class to the proposed settlement.
 9 *Hanlon*, 150 F.3d at 1026 (noting that the relative importance of each of these factors will depend
 10 on the circumstances of the case). Here, all factors weigh strongly in favor of final approval.

11 **1. The Strength of the Case**

12 a. Meal and Rest Period Claims

13 Plaintiffs contend that Defendant failed to authorize and permit meal and rest periods as
 14 required by California law. Specifically, Plaintiffs contend that Defendant (i) did not maintain
 15 adequate policies, (ii) did not provide adequate training, and (iii) discouraged Class Members
 16 from taking breaks. Plaintiffs contend that this is evidenced by the fact that timekeeping records
 17 show many instances of noncompliant meal breaks. Plaintiffs further contend that Defendant
 18 failed to pay premiums when breaks were not provided. (Emma Decl. ¶ 16.)

19 Defendant contends that Class Members were authorized and permitted to take meal and
 20 rest breaks and that this fact is evidenced by the fact that timekeeping records show that Class
 21 Members routinely took compliant meal and rest breaks. Defendant maintains that it is not
 22 required to police the workplace to ensure that Class Members actually avail themselves of all
 23 meal and rest breaks provided. Defendant further argues that, as partially commissioned
 24 employees, Class Members may sometimes elect to forego a meal or rest period in an effort to
 25 earn more commissions. Defendant contends that, in such cases, it cannot be liable because the
 26 noncompliant meal or rest period is the result of the voluntary choice of the Class Member and
 27 not a result of any failure on its part to authorize or permit meal and rest periods. Defendant's

EMMA LAW, P.C.
 1999 Harrison Street, 18th Floor
 Oakland, CA 94612
 (415) 362-1111

1 arguments may undercut Plaintiffs' ability to prevail at trial. (Emma Decl. ¶ 17.)

2 b. Off-the-Clock and Overtime Claims

3 Plaintiffs contend that Defendant encouraged them to provide sales support to
 4 international customers after-hours, and that this work occurred off-the-clock and without
 5 compensation (including overtime compensation where applicable). (Emma Decl. ¶ 18.)

6 Defendant contends that it maintained a policy and practice prohibiting class members
 7 from working off-the-clock. Defendant contends that, if any class members worked off-the-clock
 8 work, it happened without Defendant's knowledge. Defendant further contends that it was not
 9 required to pay overtime wages to class members because they were exempt salespersons. These
 10 arguments may undercut Plaintiffs' ability to prevail at trial. (Emma Decl. ¶ 19.)

11 c. Reimbursement Claim

12 Plaintiffs contend that, in connection with providing sales support to customers after-
 13 hours, Defendant required Plaintiffs to use their personal cell phones without reimbursement.
 14 Defendant contends that a business landline was available at retail store locations and that class
 15 members were not required to use their personal cell phones to conduct company business.
 16 Defendant further contends that, to the extent that class members used their personal cell phones
 17 for company business, it occurred without Defendant's authorization or knowledge. These
 18 arguments may undercut Plaintiffs' ability to prevail at trial. (Emma Decl. ¶ 20.)

19 d. Derivative Claims

20 The class claims for inaccurate wage statements, failure to timely pay final wages, unfair
 21 business practices, and PAGA violations are predicated on, and derive from, the underlying wage
 22 and hour violations described above. Thus, the risks described above apply to these derivative
 23 claims. Defendant further disputes its actions were "willful" and trigger waiting time
 24 penalties. Although authority is divided, Defendant also disputes that meal and rest period
 25 violations can give rise to waiting time and wage statement claims. Moreover, the Court
 26 has virtually unlimited discretion to reduce the amount of penalties under PAGA. This adds
 27 significant uncertainty regarding the evaluation of damages for derivative claims, as the Court
 28

EMMA LAW, P.C.
 1999 Harrison Street, 18th Floor
 Oakland, CA 94612
 (415) 362-1111

1 may be reluctant to permit duplicative recovery for a single underlying violation. (Emma Decl.
 2 ¶ 21.)

3 **2. The Size of the Claims and Amount Offered to Settle Them**

4 Plaintiffs estimate that if the Class were to prevail in all claims at trial, with all factual and
 5 legal issues being resolved in the Class' favor, the potential recovery for the Class would max out
 6 at approximately \$1,000,000.00, calculated as follows:

7 Meal break claim: \$167,400.00 (estimated 5,580 violations at \$30 per violation, based on
 8 analysis of time and pay records and class member interviews)

9 Rest break claim: \$167,400.00 (estimated 5,580 violations at \$30 per violation, based on
 10 analysis of time and pay records and class member interviews)

11 Off-the-clock claim: \$144,000.00 (one hour of off-the-clock work at \$30 per hour every
 12 other week per class member, based on analysis of pay records and class member interviews)

13 Overtime claim: \$65,000.00 (based on analysis of time and pay records)

14 Reimbursement claim: \$11,040.00 (based on cell phone reimbursement of \$5 per month
 15 per full-time employee during class period)

16 Final pay claim: \$301,600.00 (based on analysis of time and pay records showing a
 17 maximum of 58 terminated class members owed a maximum of \$5,200 apiece)

18 Wage statement claim: \$148,500.00 (1,517 pay periods at \$50 then \$100 per pay period,
 19 per employee, based on analysis of payroll records)

20 **Maximum Potential Recovery for Class: \$1,004,940** (Emma Decl. ¶ 22.)

21 Plaintiffs acknowledge that a recovery of this magnitude is uncertain given the risks
 22 identified herein and the derivative nature of many of the claims. As discussed above, Defendant
 23 contends that it has no liability in this case and that certification for a merits determination would
 24 be inappropriate. Class Counsel represents that the proposed settlement of \$300,000 is a good
 25 result for the Class and certainly a fair, reasonable, and adequate settlement under the
 26 circumstances. (Emma Decl. ¶ 23.)

27 Class Counsel further submits the amount allocated to PAGA penalties (\$15,000)

EMMA LAW, P.C.
 1999 Harrison Street, 18th Floor
 Oakland, CA 94612
 (415) 362-1111

1 is reasonable and should be approved by the Court. There is no articulated standard for
 2 approving PAGA settlements. The Court has discretion to award lesser civil penalties
 3 under PAGA under section 2699(e)(2) of the Labor Code, and PAGA settlements for as
 4 little as \$0 have been approved. *See Nordstrom Com'n Cases*, 186 Cal.App.4th 576, 589
 5 (2010) (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts
 6 have also approved settlements for \$20,000 or less. *See, e.g., Hicks v. Toys 'R'Us—*
 7 *Delaware, Inc.*, 2014 WL 4703915, at *1 (C.D. Cal. Sept. 2, 2014) (approving \$5,000
 8 PAGA payment in a case involving \$4 million settlement); *Williams v. Brinderson*
 9 *Constructors*, 2017 WL 490901, at *5 (C.D. Cal. Feb. 6, 2017) (\$10,000 PAGA payment
 10 in \$300,000 settlement). Given the total amount of the proposed settlement, the \$15,000
 11 allocation to PAGA represents a meaningful allocation.

12 Plaintiffs and Class Counsel believe that this recovery sufficiently and fairly compensates
 13 the Class Members, especially as its adequacy must be judged as “a yielding of absolutes and an
 14 abandoning of highest hopes.... Naturally, the agreement reached normally embodies a
 15 compromise; in exchange for the saving of cost and elimination of risk, the parties each give up
 16 something they might have won had they proceeded with litigation....” *Officers for Justice*, 688
 17 F.2d at 624. Accordingly, the Settlement is not to be judged against a speculative measure of
 18 what might have been achieved. *See, e.g., Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242
 19 (9th Cir. 1998). Furthermore, the Court should consider that the Settlement secures for payment
 20 to the Class now, rather than a speculative payment many years down the road, if ever. *See City*
 21 *of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974).

22 **3. The Risk, Expense, Complexity, and Likely Duration of Litigation**

23 Although a settlement has been reached, Defendant continues to deny any liability or
 24 wrongdoing of any kind associated with the claims alleged in the action and further denies that,
 25 for any purpose other than settling the action, it is appropriate for class treatment. Thus, even if
 26 Plaintiffs were to obtain certification, motions for decertification would likely follow. Similarly,
 27 if Plaintiffs were to maintain certification through trial and secure a favorable verdict, an appeal
 28

EMMA LAW, P.C.
1999 Harrison Street, 18th Floor
Oakland, CA 94612
(415) 362-1111

1 would likely follow. (Emma Decl. ¶ 24.)

2 Further litigation would not serve the interests of the Class because it would require Class
3 Members to risk receiving nothing at all or a small fraction of what they are receiving pursuant
4 to the Settlement. Further litigation may require each Class Member to offer individualized
5 evidence, and perhaps more importantly, the delay, uncertainty, and litigation costs associated
6 with such efforts would be significant and be without any assurance of recovery. *See In re GMC*
7 *Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995), cert. denied, 516
8 U.S. 824 (1995) (“[T]he law favors settlement, particularly in class actions and other complex
9 cases where substantial judicial resources can be conserved by avoiding formal litigation”).
10 Although Class Counsel believes that Plaintiffs’ claims are meritorious, Class Counsel is
11 experienced and understands the attendant risks of prolonged litigation and the ever-shifting
12 landscape of wage and hour jurisprudence. The Settlement affords the Class prompt and
13 substantial relief while avoiding legal and factual hurdles that could prevent the Class from
14 obtaining any recovery at all. (Emma Decl. ¶ 25.)

15 **4. The Stage of the Proceedings**

16 The stage of the proceedings at which the Settlement was reached also militates in favor
17 of final approval. Over the course of nearly two years, the Parties conducted extensive written
18 discovery and exchanged detailed information and data concerning the claims, defenses, and
19 alleged damages at issue herein. Class Counsel met and conferred with counsel for Versace
20 continuously to ensure sufficient information had been exchanged to permit a thorough evaluation
21 of the claims at issue. For example, Class Counsel obtained the contact information for putative
22 class members and then interviewed them. Class Counsel reviewed thousands of pages of
23 documents produced in response to written discovery requests, including documents pertaining
24 to the policies and practices complained of herein. Class Counsel reviewed time and pay records
25 to ascertain the types and frequency of violations. Class Counsel engaged an expert statistician
26 to analyze class-wide time and pay records to construct a damages model. Class Counsel
27 conducted several depositions. (Emma Decl. ¶ 26.)

28

EMMA LAW, P.C.
 1999 Harrison Street, 18th Floor
 Oakland, CA 94612
 (415) 362-1111

1 Based on the foregoing, Class Counsel was in an excellent position to evaluate the fairness
 2 of the Settlement because an extensive investigation was conducted through both formal and
 3 informal exchanges of documents and information. Class Counsel submits that the stage of
 4 proceedings were sufficiently advanced to permit final approval of the Settlement. (Emma Decl.
 5 ¶ 27.)

6 **5. Experienced Counsel Adequately Represented the Class**

7 Class Members have been well-represented by experienced Class Counsel throughout
 8 several years of litigation.⁸ As discussed above, Class Counsel ensured that investigation,
 9 discovery and litigation were sufficiently mature prior to agreeing to mediation.⁹ This Settlement
 10 is the result of a full day of serious, informed, and non-collusive negotiations before Mark Rudy,
 11 an experienced and well-respected neutral for wage and hour class actions. Class Counsel
 12 maximized recovery, fighting to ensure the terms of any class settlement would be fair and
 13 reasonable. After the key terms of the Settlement were agreed to, Class Counsel continued to
 14 advocate for provisions and interpretations that were most favorable to the Class. The Settlement
 15 went through several iterations and was carefully drafted and reviewed to protect the interests of
 16 the Class Members. Indeed, negotiations were hard-fought and at arm's-length from start to
 17 finish. (Emma Decl. ¶ 28.)

18 “‘Great weight’ is accorded to the recommendation of counsel, who are most closely
 19 acquainted with the facts of the litigation. This is because ‘parties represented by competent
 20 counsel are better positioned than courts to produce a settlement that fairly reflects each parties’
 21 expected outcome in the litigation’ [and] [t]hus, ‘the trial judge, absent fraud, collusion, or the
 22 like, should be hesitant to substitute its own judgment for that of counsel.’” *Nat'l Rural Telcomms*
 23 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (citations omitted).

24 Here, the Parties were represented by experienced and capable counsel who have

25 ⁸ Leonard Emma and Stephen Ilg have been practicing for 16 and 8 years, respectively, and each
 26 of them has litigated over 25 wage and hour class action matters to a class-wide resolution.

27 ⁹ In fact, Class Counsel declined to proceed with an earlier scheduled mediation in order to first
 obtain more discovery.

1 countinuously and zealously advocated their respective positions for nearly two and half years.
 2 Accordingly, “[t]here is likewise every reason to conclude that settlement negotiations were
 3 vigorously conducted at arms’ length and without any suggestion of undue influence.” *In re*
 4 *Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989).

5 **6. The Response of the Class to the Proposed Settlement**

6 Thus far, the Class has responded extremely favorably to the Settlement, further
 7 supporting final approval. The Ninth Circuit and other federal courts have made clear that the
 8 number or percentage of Class Members who object to or opt out of the settlement is a factor of
 9 great significance. *See Mandujano v. Basic Vegetable Prods., Inc.*, 541 F.2d 832, 837 (9th Cir.
 10 1976); *see also In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 425 (S.D.N.Y.
 11 2001) (“[i]t is well settled that the reaction of the class to the settlement is perhaps the most
 12 significant factor to be weighed in considering its adequacy”) (internal quotation marks and
 13 citation omitted). “The reaction of class members to the proposed settlement, or perhaps more
 14 accurately the absence of a negative reaction, strongly supports settlement.” *Chun-Hoon v.*
 15 *McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (emphasis added).

16 Indeed, the fact that zero Class Members have objected to the Settlement is a “persuasive”
 17 showing that the settlement is adequate. *See Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 624 (N.D.
 18 Cal. 1979) (objections from 16% of the class constituted a “persuasive” showing that settlement
 19 was adequate); *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) (“The
 20 court had discretion to find a favorable reaction to the settlement among class members given
 21 that, of 376,301 putative class members to whom notice of the settlement had been sent, 52,000
 22 submitted claims forms and only fifty-four submitted objections.”); *Churchill Village, L.L.C. v.*
 23 *General Electric*, 361 F.3d 566, 577 (9th Cir. 2004) (noting favorably “that only 45 of the
 24 approximately 90,000 notified class members objected to the settlement.”). Furthermore, zero
 25 Class Members submitted written exclusions to date. In addition, Class Members have expressed
 26 their support for the Settlement. Thus, the lack of objectors, the lack of opt-outs, and the favorable
 27 reaction of the Class together evidence that the Settlement Agreement is fair, adequate, and
 28

EMMA LAW, P.C.
 1999 Harrison Street, 18th Floor
 Oakland, CA 94612
 (415) 362-1111

1 reasonable.

2 **V. THE PARTIES HAVE IMPLEMENTED THE COURT-APPROVED NOTICE
 3 PROGRAM AND THE SETTLEMENT ADMINISTRATOR'S FEES MAY BE
 4 AWARDED**

5 As detailed above, the Settlement Administrator is in the process of carrying out the Court-
 6 approved notice program, and its fees and expenses should be approved. Applicable statutory
 7 and case law vests the Court with broad discretion in fashioning an appropriate notice program.
 8 See Fed. R. Civ. P. 23(e)(1). "The class notice must be (1) reasonably calculated to apprise
 9 interested parties of the pendency of the action and afford them an opportunity to present their
 10 objections and (2) must satisfy the content requirements of Rule 23(c)(2)(B)." *Mullane v. Central*
Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). As discussed above, the Settlement
 11 Administrator will submit a declaration after the deadline to opt-out and object has passed.

12 **VI. CONCLUSION**

13 Counsel for the Parties have committed substantial amounts of time, energy, and resources
 14 investigating, litigating and ultimately settling this case. In the judgment of Plaintiffs and Class
 15 Counsel, the proposed settlement is a fair, adequate and reasonable. The favorable reaction of
 16 the Class to the Settlement supports this finding.

17 Accordingly, Plaintiffs respectfully request that the Court approve the Settlement and
 18 enter the concurrently filed [Proposed] Order Granting Final Approval to the Settlement.

19
 20 Respectfully Submitted,

21 DATED: April 8, 2019

22
 23 EMMA LAW, P.C.

24
 25 /s/ Leonard Emma

26
 27
 28 Leonard Emma, Esq.
 Attorneys for Plaintiffs and the Class